

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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CC Docket No. 96-98

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In the Matter of (a)

Implementation of the Local (b)

Competition Provisions in the (c)

Telecommunications Act of 1996 (c)

Interconnection Between Local (c)

Exchange Carriers and Commercial Mobile Radio Service Providers

CC Docket No. 95-185

To: The Commission

REPLY COMMENTS OF AMERITECH

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SUMMARY

Ameritech is filing these Reply Comments to urge the Commission to reject proposals and arguments that are raised in various parties in their oppositions and that are clearly inconsistent with the provisions of the Telecommunications Act of 1996 (the "Act") and the Rules adopted by the Commission in the *First Report and Order*.

The Commission should reject the self-serving position advanced by new local exchange carriers ("LECs") that they should receive symmetrical compensation for tandem switching even if they do not perform tandem switching functions. Ameritech submits that it would be patently unfair and inconsistent with the cost-based pricing principles of the Act to mandate symmetrical tandem compensation when tandem switching is not performed.

In addition, the Commission should reject attempts by some parties to impose artificial limitations on the jurisdiction of state commissions over new LECs. Consistent with state commissions' historic police powers over local service, the Act gives them primary enforcement power over the interconnection and access obligations of all LECs. Accordingly, state commissions should have the discretion to regulate new LECs consistent with the Act and to determine whether and if existing interconnection agreements must be filed for approval.

The Commission likewise should reject the unreasonable unbundling requirements advocated by some parties. Specifically, there is no legal basis for requiring the unbundling of directory assistance, since it does not fall within the Act's definition of a "network element" or a "telecommunications service." Instead, the Commission should

address directory assistance in the context of its implementation of the Act's dialing parity requirements. In addition, the Commission should not preclude consideration of an exemption from the unbundling requirement for proprietary network elements where equivalent functionality can be obtained from a source other than the incumbent LEC. In such cases, the network element is not "necessary" within the meaning of the Act.

Further, Ameritech urges the Commission to reject proposals to impose unreasonable pricing restrictions on incumbent LECs. In particular, incumbent LECs should be permitted to use term commitment, termination liability and demand forecast options in establishing prices, as these are an effective means of reducing both non-recurring and recurring charges while still assuring cost recovery. In addition, incumbent LECs should not be required to offer at wholesale those services that are provided solely on a trial basis. Such a requirement would stifle innovation by imposing an unnecessary burden at a crucial point in the product development process. Moreover, the Commission should base the calculation of the wholesale discount on the costs actually avoided by incumbent LECs when they offer service on a wholesale basis, not on purportedly avoidable costs.

Finally, the Commission should not adopt WorldCom's "usage-based" transport proposal, which is merely an attempt to obtain reduced common transport rates.

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REPLY COMMENTS OF AMERITECH

Pursuant to Section 1.429 of the Commission's Rules, Ameritech submits this Reply to oppositions and responses filed in connection with the *First Report and Order* issued in the above-captioned docket.

A. New LECs Should Receive Reciprocal Compensation Based Upon the Functions They Perform and the Costs They Incur

LECC and Sprint request that the Commission clarify that new LECs are entitled to symmetrical compensation for tandem switching if they perform tandem switching functions.¹ In its Opposition, Ameritech supported this proposal and demonstrated that compensation at tandem rates where the new LEC only performs end office switching and

Sprint Petition at 11-14.

termination functions results in a "double dip" since the new LEC is being compensated twice for the same function -- once as end office switching and termination and once as tandem switching.² For this reason, new LECs should not be compensated for performing "phantom" tandem switching.³

AT&T opposes LECC and Sprint, and proposes again that a new LEC that uses a single end office switch to serve "through extended loop plant" an area that is equivalent to the area served by the end offices sub-tending an incumbent LEC's tandem switch should qualify for symmetrical tandem switching compensation. Yet AT&T does not even attempt to allege that the costs of the incumbent LEC's tandem switching configuration are comparable to the costs incurred by the new LEC using a single end office with extended loops. Rather, it argues that a new LEC should be rewarded for "its own efficient switch configurations" by receiving a subsidy from the incumbent LEC in the amount of the difference between the new LEC's costs and the costs it would incur if it had to install a tandem switch configuration. AT&T claims that such a subsidy is consis-

Ameritech Opposition at 30-32.

Indeed, under the Act, a state commission considering a request for such phantom compensation in an arbitration proceeding under § 252(d)(2) would have to deny the request unless the new LEC could demonstrate that its proposed terms provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . . " To date, no new LEC has claimed, much less demonstrated, that its end office switching costs are the same as those of an incumbent LEC performing end office and tandem switching.

⁴ AT&T Opposition at 23-24.

tent with "competition on the merits" and is necessary in order not to "give new entrants' perverse incentives to deploy unnecessary tandems in order to qualify for the higher tandem compensation rate."

AT&T's arguments provide no justification for departing from cost-based reciprocal compensation as mandated by § 252(d)(3). In fact, AT&T implicitly admits that there is no basis for an assumption that the costs incurred by a new LEC serving an area through one end office are comparable to those incurred by an incumbent LEC serving the same area through a combination of a tandem switch and several end offices. The costs are not the same because the network facilities and configuration are completely different. As Attachment 1 demonstrates, the network configurations of an incumbent LEC's tandem/end office based network and the network of an interconnecting new LEC using a single office are very different. The incumbent LEC has a tandem office and multiple end offices which are all interconnected, either directly or through the tandem, while the new LEC has one end office that is connected to the incumbent LEC's switches and that uses extended loops to serve customers at remote locations.

Moreover, the new LEC's end office switching is integrated into and dependent upon the incumbent LEC's network. For this reason, AT&T's argument that the new LEC is more efficient is disingenuous. It is equivalent to claiming that one of the incumbent LEC's end offices is more efficient than its entire tandem office and end office configuration. The only reason why a new LEC can serve a large geographic area with a single switch is that it is "piggybacking" on the incumbent LEC's network. That is to say, it uses the incumbent LEC's tandem switch and end office network to terminate calls

to all customers in the area without having to duplicate the incumbent LEC's facilities. Moreover, the new LEC can choose where it wishes to install facilities because it can use the incumbent LEC's facilities and resell its service to serve other areas. Further, the new LEC can pick and choose the customers it serves (thereby avoiding low volume, high cost areas and customers) only because the incumbent LEC already serves those other areas and customers.

Finally, AT&T's argument that symmetrical tandem compensation is necessary to prevent new LECs from establishing inefficient network arrangements in order to gain added compensation goes against common sense, and in any event is not a sufficient justification under the Act for a subsidy. It is not credible that a new LEC would install an unnecessary tandem switch solely to qualify for higher reciprocal compensation from an incumbent LEC, when by doing so it would also inflate its own costs and thereby erode its competitive position.

B. The State Commissions Have Jurisdiction to Determine Which Prior Interconnection Agreements Must Be Filed for Approval

Ameritech believes that the Public Service Commission of Wisconsin ("PSCW") presents compelling grounds for reconsideration of the Commission's determination that interconnection agreements entered into prior to the enactment of Act must be "submitted to the state commission for approval pursuant to section 252(e)." In reaching that conclusion, the Commission relied in large part on a decision of the PSCW that required

First Report and Order at ¶ 165. Henceforth, all citations in the text to specific paragraphs will be to paragraphs in the Order.

such filings. (¶ 161 and n. 309) The PSCW, however, has since reversed its initial decision and has properly interpreted the language of § 252(a)(1) as not requiring it to approve all preexisting agreements.⁶ The PSCW now correctly points out that its original interpretation, in addition to not being legally compelled, constitutes poor public policy because it causes a significant unwarranted administrative burden. Moreover, the PSCW points out that it has the authority, independent of § 252, to require that any pre-existing agreements relevant to an inquiry be made publicly available.

The PSCW conclusively demonstrates the severe administrative burdens and absurd results from such a requirement. For example, in Wisconsin alone there are in excess of 3,000 different agreements among over 80 incumbent LECs. Many of these agreements became obsolete as a result of the Act and are being re-negotiated. Thus, in many cases there will be nothing to approve. Further, most pre-existing agreements that will remain in effect are between small incumbent LECs in areas where competition will not likely appear for many years. It would be a waste of scarce PSCW resources to force it to address all such agreements, particularly when, as the Commission recognizes,

PSCW Petition at 2-4.

Wisconsin is not unique in this respect. Each of the states in which Ameritech provides local exchange service also has a large number of incumbent LECs (e.g., Illinois has 56, Indiana has 42, Michigan has 41 and Ohio has 42). Each of these incumbent LECs will have dozens, if not hundreds, of agreements, which means that MCI's proposal also would pose a significant administrative burden on these state commissions.

⁸ Id. at 4.

state commissions are already stretched to their limits dealing with new issues as a result of the Act.⁹

MCI quibbles with the PCSW's interpretation of § 252(a), and argues for a strained interpretation of the section which requires the filing for approval of <u>all</u> prior agreements, regardless of the circumstances. MCI does not even seek to refute the fact that this interpretation will have absurd and adverse consequences. Rather, MCI argues that imposing such a requirement will not pose severe <u>short-term</u> administrative burdens because the Commission's June 30, 1997 deadline for filing of pre-existing agreements only applies to agreements between Class A carriers. PSCW's concern, however, was not the short-term deadline for filing agreements between Class A carriers, but the need to consider and approve all 3000 existing agreements at some point, regardless of whether they are obsolete or being superseded.

C. The State Commissions May Impose On New LECs Regulatory Duties That Are Consistent With the Act

The Public Utilities Commission of Ohio ("PUCO") seeks clarification that state commissions have the discretion to regulate new LECs "in the interest of encouraging the utilization of an efficient public switched network." The PUCO demonstrates that such regulations are within the state commissions' jurisdiction and their "historic police

Indeed, the Commission has recognized that imposing such additional requirements might "impair some states' ability to carry out their other duties." First Report and Order at ¶ 171.

MCI Opposition at 6-7.

PUCO Petition at 3.

powers" over local service. 12 It also correctly points out that § 251(d)(3)(A) clearly and unambiguously provides that the Commission "shall not preclude the enforcement of any regulation, order, or policy of a State commission that establishes access and interconnection obligations of local exchange carriers," as long as such enforcement is consistent with the requirements of the Act.

Ameritech agrees with the PUCO's legal analysis and submits that the regulations the PUCO is considering are completely consistent with the Act, and thus authorized by § 251(d)(3). Moreover, to the extent that any state regulations might in the future constitute a barrier to entry, Congress has already considered the issue and concluded that the best solution is not to prohibit all state regulation in advance, but to provide for Commission review of state regulations under § 253(d) after the regulations are enacted.

Nevertheless, AT&T, MCI and various new LECs oppose the PUCO and seek to have the Commission exempt them completely from state regulation concerning the duties imposed on incumbent LECs under § 251(c).¹³ These parties do not deny that the regulations proposed by the PUCO will encourage efficient network utilization and are in the public interest.¹⁴ Rather, they assert that these regulations should not be imposed because

¹² *Id*.

See, e.g., AT&T Opposition at 44; MCI Response at 42-44.

These are precisely the types of regulations Congress envisioned when it crafted § 253(b), which confirms "the ability of a state to impose on a competitively neutral basis and consistent with [the universal service obligations imposed by the 1996 Act], requirements necessary to preserve and advance universal service, protect the public safety and welfare, (continued...)

new LECs lack market power, and that such rules would "have the effect of prohibiting entry by prospective competitors." ¹⁵

Neither argument is meritorious. The parties that oppose the PUCO present no evidence to support their claim that such obligations will inhibit market entry, and ignore the ability of the Commission to take pre-emptive action under § 253 where necessary. Further, the new LECs' arguments based upon their alleged lack of market power are irrelevant to a consideration of whether regulations should be adopted that promote these goals. In short, the new LECs are engaged in an attempt to evade legitimate local regulation through a blatant circumvention of the plain language of the statute and an expansion of the Commission's preemption authority beyond what was authorized by Congress in the Act. 17

¹⁴(...continued)

ensure the continued quality of telecommunications services and safeguard the rights of consumers."

See, e.g., AT&T Opposition at 44. These parties also argue that § 251(h)(2), which sets forth the circumstances in which the Commission may treat a LEC as an incumbent LEC, somehow limits state commission authority to regulate LECs. <u>Id.</u> There is simply no basis for such a strained interpretation of what is essentially a definitional provision.

Indeed, the Commission has already acted under § 253 to consider regulations that constitute a barrier to entry. See Classic Telephone, Inc., CC B.Pol. 96-10 (Released September 30, 1996).

There is no indication anywhere in the 1996 Act (and particularly in §§ 251-254 and 261) that by listing obligations for incumbent LECs in § 251(c) Congress intended to foreclose state commission regulation of other LECs. Simply because a particular duty is one part of the package imposed on incumbent LECs under § 251(c) does not mean that state com
(continued...)

D. The Commission Should Not Preclude Consideration of an Exemption From Unbundling Where Equivalent Functionality is Available From a Source Other Than the Incumbent LEC

Ameritech supports LECC's request that the Commission reconsider its decision to require essentially automatic provision of unbundled access to proprietary network elements. In the *First Report and Order*, the Commission required unbundling unless the incumbent LEC demonstrates that the requesting carrier "could offer the same proposed telecommunications service through the use of other, nonproprietary unbundled elements within the incumbent's network." (¶ 283)

This standard improperly ignores the fact that functionality of a proposed network element could be reasonably available from a source other than the incumbent LEC, in which case provision of the incumbent LEC's network element would not be "necessary" within the meaning of the statute.¹⁹ Moreover, by adopting this inflexible standard, the

¹⁷(...continued)

missions are thereby precluded from imposing a similar, limited duty on other competitors. New LECs should not be allowed to evade reasonable local regulatory obligations in this manner. This is particularly true where they seek interconnection with the incumbent LEC's network and the regulations are designed to facilitate efficient interconnection and network utilization.

LECC Petition at 26-27.

¹⁹ 47 U.S.C. § 251(d)(2)(A). As the Commission correctly noted, "[n]ecessary means, in this context, that an element is a prerequisite for competition." (¶ 1282) Ameritech submits that under the Commission's own interpretation, a proprietary element that is also available from a third party can never be "a prerequisite for competition" since competition would exist regardless of whether the incumbent LEC offers the proprietary element on an unbundled basis.

Commission has unreasonably limited both its own and the state commissions' discretion to decline to require the offering of proprietary network elements that are not "necessary" for the requesting carrier to offer a competing telecommunications service.

ALTS attacks LECC's proposal on the grounds that the Commission has the authority to regulate the use of any property that is dedicated to public use by its owner.²⁰ This argument misses the point -- the question is not whether the Commission can order unbundling in such a case, but rather whether it has the discretion to consider exempting the incumbent LEC from that requirement under § 251(d)(2). ALTS once again fails to recognize that a functionality performed by a network element may in some cases also be available from sources other than the incumbent LEC.

Therefore, the Commission should modify its Rules to authorize itself and state commissions to consider exempting an incumbent LEC from offering either proprietary or non-proprietary network elements in cases where the incumbent LEC demonstrates that the same functionality is reasonably available from another source. At the same time, since application of the exemption in § 251(d)(2) is discretionary, both the Commission and the state commissions will have the flexibility not to grant an exemption in cases where doing so would impair competition.

E. Directory Assistance Is Not a Network Element, But Rather is Subject to a Non-Discriminatory Access Dialing Parity Obligation

LECC demonstrates that directory assistance is not subject to the unbundling requirement of § 251(c)(3) because it does not fall within the definition of a "network

ALTS Reply at 16.

element" in the Act. ²¹ LECC correctly points out that the Act limits network elements to facilities "used in the provision of a telecommunications service" and to "features, functions, and capabilities that are provided by means of such facility or equipment. "²² Directory assistance is neither a facility used to provide a telecommunications service, nor a feature, function or capability of such facility or equipment. In fact, directory assistance does not fall within the Act's definition of a telecommunications service at all, since the incumbent LEC does not transmit information of the customer's choosing to points of its choosing without change, but rather provides listing information to the customer. ²³ In fact, directory assistance is specifically regulated pursuant to § 251(b)(3) as a part of the dialing parity requirement imposed upon *all* LECs. ²⁴

Ameritech addressed the status of access to directory assistance in its comments on dialing parity and demonstrated that as a component of providing dialing parity, all LECs must provide nondiscriminatory access to directory assistance to customers of other LECs.²⁵ As such, a LEC meets its obligation regarding directory assistance if all local

LECC Petition at 27-29.

²² 47 U.S.C. § 153(29).

As defined in the Act, "telecommunications" is the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content " 47 U.S.C. § 153(43). Ameritech believes the same analysis precludes the inclusion of operator services as a network element.

²⁴ 47 U.S.C. § 251(b)(3).

See Ameritech Comments on Dialing Parity, Number Administration, Notices of Technical Change and Access to Rights of Way, at 9-10 and footnote 19.

exchange customers in the relevant area, regardless of the identity of their service provider, have the ability to access the LEC's directory assistance and can obtain a directory listing from the LEC, and are not required to dial extra digits to do so. Further, Ameritech agrees that in order to meet the dialing parity obligation, a LEC must be willing to list the customers of other LECs in its directory assistance database. Since directory assistance is offered as part of a LEC's exchange service, it must be offered as an optional arrangement with resold exchange service. The Commission adopted each of these standards.²⁶

MCI opposes LECC's Petition by simply restating the Commission's finding that directory assistance is a network element.²⁷ In a futile attempt to avoid the fact that directory assistance does not meet the statutory definition of a network element, MCI asserts that any service sold to the public can be a network element, and claims that if this were not correct, then an incumbent LEC could offer network elements as services in order to evade its unbundling responsibilities under the Act. However, MCI's argument misses the point on two counts. First, directory assistance is a well-established service, not a network element. As such, incumbent LECs cannot be seeking to evade an unbundling obligation that, by definition, does not exist in the first place. Thus, this is not a situation where an incumbent LEC would be able to take an unbundled element (e.g. loops) and offer it as a service to evade the Act's unbundling rules.

Second Report and Order at ¶¶ 133-137.

MCI Response at 14.

Second, mandatory unbundling of directory assistance is unnecessary because it is a highly competitive business, and MCI does not suggest otherwise.²⁸ The real issue here is that MCI wants the Commission to make a strained interpretation of the Act that forces incumbent LECs to provide directory assistance services at potentially lower rates or on better terms than are available in a competitive marketplace. MCI's position directly contravenes the Act's pro-competition philosophy.

F. An Incumbent LEC Should Be Permitted to Use Term Commitments, Termination Liability and Demand Forecast Options to Develop Prices That Recover its Costs

LECC proposes that the Commission provide additional guidelines that permit the use of term commitments, termination liabilities and demand forecasts in pricing interconnection, collocation and network elements under the Act.²⁹ Ameritech believes that it already has the authority to negotiate such terms with any requesting carrier and that, in

²⁸ The directory assistance business is now experiencing competition from many different companies and new forms of services. For example, in addition to incumbent LECs, interexchange carriers (e.g., AT&T and MCI) and independent firms (e.g., Excell and Metro One Telecommunications) also provide directory assistance services at the wholesale and retail level to wireless and wireline business and residential customers. In addition, a number of firms offer directory assistance services through online services (e.g., CompuServe's Phone*File, which uses MetroMail's database) and on CD-ROM (e.g., Pro CD, Inc. and American Business Information, Inc.). Several firms also use Web sites to allow users to try their directory assistance products (e.g., www.four11.com. www.bigyellow.com, www.whowhere.com). The effect of this competition is that Ameritech's retail directory assistance calls have declined over the past year and a half, at a time when it has experienced significant growth in the number of access lines it serves.

LECC Petition at 19.

many cases, such commitments enable Ameritech to establish lower per unit non-recurring and recurring rates.

Several parties oppose LECC's proposal, arguing that demand forecasts, term commitments and termination charges will somehow create a barrier to competition.³⁰ However, these parties ignore the fact that such provisions have historically been used by the telecommunications industry to *reduce* both non-recurring charges and recurring monthly charges. This is true because volume and term commitments create the ability to spread fixed costs across a number of units or over a period of time.³¹ Thus, such

See, e.g., ALTS Reply at 33, AT&T Opposition at 16 and MCI Response at 8-9. AT&T also argues that termination charges are not appropriate since the rates in effect during the contract term should "cover all of the incumbent's legitimate costs of providing these elements." However, this is only true where non-recurring charges recover all non-recurring costs of developing, installing and providing the service, and each monthly per unit charge recovers all fixed recurring costs of providing that unit each month. Otherwise, termination charges are appropriate to recover "legitimate costs" that have not yet been recovered.

³¹ Term and volume commitments can benefit both incumbent LECs and new LECs by ensuring recovery of capital costs associated with providing a service to a requesting carrier, without having those costs assessed as up front charges. Examples are non-fungible installation, equipment and facility costs. In the past, use of up-front charges to recover such costs was not critical. In many cases, if a customer's service was terminated, much of the existing equipment and facilities could be re-used with the next customer at the same location. However, recovery of the capital costs will be more important in the future. With the introduction of local competition, the assumption that Ameritech will be able to reuse its equipment and facilities in place is no longer valid in many cases. An example is high density areas where a competitor resells Ameritech's service until it installs some of its own facilities to serve its customers. Further, provision of interconnection, collocation and network elements for a requesting carrier often involves significant customization that is not (continued...)

measures can actually reduce barriers to ordering a service and permit competitors to enter a market with lower initial costs than would otherwise be the case.

Curiously, many of the same parties that oppose LECC's Petition have also argued in this proceeding that the level of non-recurring charges being proposed at the state level imposes a barrier to entry.³² These parties cannot have it both ways -- either they pay non-recurring rates that fully recover costs up front or they agree to make term or volume commitments.

G. The Commission Should Recognize An Exclusion from the Resale Requirement for Trial Services

AT&T asserts that the *First Report and Order* requires incumbent LECs to provide "any service that they provide at retail to non-telecommunications carriers." The Commission specifically recognized that "[s]ection 251(c)(4) requires an incumbent LEC . . . to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunication carriers." ³⁴ (¶ 863)

³¹(...continued)

re-usable with other customers. The incumbent LEC must be permitted to recover these costs either through non-recurring charges, see Ameritech Opposition at 20-21, or through contractual provisions.

See, e.g., AT&T Petition at 15; ALTS Petition at 3-6.

AT&T Opposition at 25.

The Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

By its very nature, a trial is not generally available. Trials are typically limited in geographic scope, in the number of customers involved, or in the customer network characteristics. Moreover, the purpose of a trial is to create a limited real world environment to evaluate the effectiveness of a service or offering.³⁵ The inclusion of a resale obligation would create additional operational and administrative burdens at a crucial point in product development and would have the effect of stifling innovation.³⁶

AT&T suggests that trials will somehow be used by an incumbent LEC to create a competitive advantage and avoid resale obligations for some services, but it presents no evidence that such concerns are justified. There is no showing that any such abuses will arise. In any event, if abuses were to occur, they can easily be addressed by state commissions in complaint and other proceedings involving such tests.

H. The Commission Should Reduce, Rather than Increase, the Wholesale Discount

Ameritech agrees with parties asserting that the Commission incorrectly departed from the statutory language by basing the calculation of the wholesale discount upon avoidable costs, rather than on the costs actually avoided by incumbent LECs when they

Ameritech's trials, for instance, generally involve the testing of the billing of a new service or service package, or the testing of a new network functionality.

For example, Ameritech would have had to offer resale in tests where it
(a) initially rolled out its ISDN line services, (b) upgraded specific central office switches and (c) provided services from those offices to test ordering, provisioning, product functionality, billing, and product integration.

offer service on a wholesale basis.³⁷ Various parties have demonstrated that the Commission misinterpreted the Act and applied an incorrect legal standard in applying this "avoidable" cost test.³⁸ Ameritech will not repeat this discussion here.

In its Opposition, however, AT&T argues that if wholesale discount rates are based only on avoided costs, incumbent LECs could compel new LECs to underwrite their marketing efforts. This response does not provide any further support for the Commission's presumptions regarding avoidable costs, nor does it provide any justification for characterizing costs as "avoidable" even if the evidence demonstrates that such costs normally will not be avoided by incumbent LECs when they offer service on a wholesale basis. For example, LECC and NCTA have demonstrated that, as a factual matter, indirect shared costs such as general overhead are not avoided simply because an incumbent LEC begins offering a service at wholesale. In fact, such costs will continue to be incurred regardless of whether the incumbent LEC is selling the service on a wholesale or retail basis, and "it is more likely that servicing the new class of 'resale' customers created by the 1996 Act will cause general overheads to increase. The use of the Commission's presumptions (¶¶917-918) thus overstates the avoided costs in two ways -

See, e.g., NCTA Petition at 14-20; Time Warner Petition at 4-6; LECC Petition at 26.

See Time Warner Petition at 7-17.

AT&T Opposition at 27-28.

LECC Petition at 26; NCTA Petition at Appendix A (7-8).

LECC Petition at 26; NCTA Petition at Appendix A (7-8); NCTA Response at 21-22.

- by assuming that certain costs are avoidable when in certain cases they are not, and by overstating the percentage of avoidable cost in various accounts.

Further, the Commission should reject MCI's proposal to <u>increase</u> the amount of avoided indirect costs used in the calculation of the wholesale discount.⁴² As noted in the preceding paragraph, and as NCTA has demonstrated, there are no grounds for presuming that incumbent LECs are able to avoid indirect costs to the same degree that they are able to avoid direct costs when providing service on a wholesale basis.⁴³

If the Commission does exercise jurisdiction in this area, then it should eschew rigid presumptions and leave state commissions with sufficient flexibility to determine - based on the evidence of record - which costs were actually avoidable in a given case.

I. WorldCom's Proposed Usage-Based Transport Proposal is Simply Common Transport

WorldCom's Opposition makes clear that what it is seeking as a usage-based shared transport network element is really switched access common transport. For example, WorldCom admits that it "seeks Commission clarification that a requesting carrier which purchases local switching from an incumbent local exchange carrier ("ILEC") at one end office should be able to purchase transport over common circuits directly to another end office without the requesting carrier's traffic being forced to

See MCI Petition at 14 (claiming that the Commission's approach "significantly underestimates the avoided indirect costs.")

See generally NCTA Petition, Appendix A.

transit a tandem."⁴⁴ WorldCom's proposal is nothing more than a request to prematurely reduce common transport rates before access reform is completed.

A diagram that demonstrates the difference between network elements and switched services, such as the common transport component of switched access is attached as Attachment 2. With switched services, Ameritech packages together thousands of network components that it uses to provide services to a number of customers on a non-dedicated basis. Individual components may be dedicated to one or more services, but are not dedicated to the use of a particular customer. Examples are switched access and toll services. On the other hand, network elements involve a specified network component, function, or facility that has, in whole or in part, been dedicated to a customer. Examples are unbundled loops and dedicated transport. As the Commission clarified, in the case of unbundled switching the requesting carrier must obtain one or more dedicated ports to the switch. (¶ 412) Keeping the distinction between network elements and access services in mind, it is clear that WorldCom is seeking access to a switched service (i.e., common transport that includes tandem switching and nondedicated transport) with no discrete component being in any way dedicated to it. Therefore, the Commission should find that WorldCom's "usage-based transport" proposal is not a network element, but rather a service.

WorldCom Comments at 3.

CONCLUSION

For the reasons set forth above, the Commission should reject each of the oppositions addressed herein.

Respectfully submitted,

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